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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,049	07/30/2001	Julie A. Raye	KCC4711.1	9824

321 7590 11/20/2006

SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

HAQ, NAEEM U

ART UNIT PAPER NUMBER

3625

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/918,049

Applicant(s)

RAYE ET AL.

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 15-31, 45, 48-52 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-31, 45, 48-52 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                                  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on August 28, 2006 has been entered.

### ***Final Rejection***

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3, 6-8, 10, 11, 15, 17, 18-21, 23-27, 30, 31, 45, 48-52, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman).**

Referring to claim 1: Unger teaches a method comprising: identifying a collection of feminine care products (Figure 1); determining at a first location an assortment of feminine care products for a consumer at a second location remote from the first location based on information provided by the consumer, the determined assortment of

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feminine care products including a quantity of at least one type of absorbent catamenial product selected from the identified collection (Abstract, lines 2-9; col. 1, lines 9-36; col. 3, lines 8-16, lines 34-39; col. 4, lines 31-35; col. 15, lines 12-16). Unger does not teach that the quantity is a non-commercial quantity. However, the Examiner notes that this limitation is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the quantity of the products order. The difference between the Applicants' quantity and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to order any quantity in the invention of Unger because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention. Unger also does not teach accepting at a first location a purchase order placed by a consumer at a second location, processing the purchase order, and prompting the consumer to place another purchase order for products. However, Hartman discloses a method of placing a purchase order for a product over a communications network wherein a consumer operating a computer at one location (i.e. second location) (Figure 2, item "220") places a purchase order that is accepted and processed by server at

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another location (i.e. first location) (Figure 2, item "210"; Abstract, lines 1-3, lines 13-21; col. 2, lines 51-62; col. 3, lines 46-64). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52). Unger does not teach prompting the consumer to place another purchase order for the products. However, Hartman discloses a method of placing a purchase order for a product over a communications network wherein a consumer is prompted to "Continue Shopping" (Figure 1C, item "108"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to generate more business from a consumer as suggested by Hartman.

Referring to claim 2: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the information is provided through a computer network (col. 3, lines 34-39; col. 15, lines 12-16). Unger does not teach that the purchase order is placed by the consumer through a computer network. However, Hartman teaches this limitation (Abstract, lines 1-3). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52).

Referring to claim 3: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the determined assortment of feminine care products includes a quantity of multiple types of absorbent catamenial products (col. 3, lines 44-47: "Each system of feminine hygiene products containing at least two different kinds of feminine hygiene products may be packaged in a common package which is made available to the consumer"). Unger does not teach that the quantity is a non-commercial quantity. However, the Examiner notes that this limitation is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the quantity of the products order. The difference between the Applicants' quantity and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to order any quantity in the invention of Unger because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 6: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the determining step includes presenting questions to the consumer regarding her monthly cycle, and said

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information represents the consumer's answers to said questions (col. 4, lines 44-49; col. 5, lines 39-41).

Referring to claim 7: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches that the purchase order includes payment information (Figure 1C, item "108": "Payment Method"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52).

Referring to claim 8: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches that the purchase order includes a target delivery date (Figure 1C: "The 1-click orders below (available in 3 or fewer days) will be shipped together"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to inform the consumer of the delivery date of the products.

Referring to claims 10 and 11: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches the step of fulfilling the purchase order placed by the consumer (claim 1, lines 17 and 18). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of

ordinary skill in the art would have been motivated to do so in order to complete the purchase of the item as taught by Hartman.

Referring to claim 15: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches sending an email to the consumer to "Continue Shopping" (Figure 1C, item "108", col. 6, lines 22-28). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to generate more business from a consumer as suggested by Hartman.

Referring to claim 17: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the prompting step includes advising the consumer of the assortment of products last ordered by the consumer. However, the Examiner notes that the content of the prompt is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of what information was contained in the prompt. The difference between the content of the Applicants' prompt and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was



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made to place any information in the prompt of the cited prior art because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claims 18 and 57: Claims 18 and 57 are rejected under the same rationale as set forth above in claim 1.

Referring to claims 19-21: Claims 19-21 are rejected under the same rationale as set forth above in claim 3.

Referring to claim 23 and 24: Claims 23 and 24 are rejected under the same rationale as set forth above in claim 2.

Referring to claim 25: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. Furthermore, Hartman teaches the step of allowing the consumer to revise the products prior to placing a purchase order (Figure 1C: "Press this button if you Changed Quantities of any item below"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow a user to change quantities prior to placing an order as suggested by Hartman.

Referring to claim 26: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. Furthermore, Unger teaches the recommending step includes recommending an assortment of feminine care products expected to meet the consumer's needs for one monthly cycle (col. 3, lines 17-19).

Referring to claim 27: The cited prior art teaches or suggests all of the limitations of claim 26 as noted above. Furthermore, Hartman discloses accepting a purchase order from the consumer for multiple units of a product (Figure 1C). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the user to select different quantities of a product as suggested by Hartman.

Referring to claims 30 and 31: Claims 30 and 31 are rejected under the same rationale as set forth above in claim 10 and 11.

Referring to claim 45: Claim 45 is rejected under the same rationale as set forth above in claim 1.

Referring to claims 48 and 49: Claims 48 and 49 are rejected under the same rationale as set forth above in claim 2.

Referring to claim 50: Claim 50 is rejected under the same rationale as set forth above in claim 26.

Referring to claim 51: Claim 51 is rejected under the same rationale as set forth above in claim 10.

Referring to claim 52: Claim 52 is rejected under the same rationale as set forth above in claim 1.

**Claims 4 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view**

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**of "From sanitation to liberation?: The modern and postmodern marketing of menstrual products" by Shelley M. Park (hereafter referred to as Park).**

Referring to claim 4: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the feminine care products include at least one product selected from the group consisting of menstrual cramp medication and contraceptives. However, Park examines the marketing of menstrual products. In particular, Park states "A complete account of the ideological underpinnings of feminine hygiene products would examine the connections between the marketing of soaps, cleansers, menstrual aids and nonprescription contraceptives and home pregnancy tests" (Park: Footnote 1). The Examiner notes that menstrual aids such as Midol and nonprescriptive contraceptives are included in a complete account of feminine hygiene products. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cited prior art to include at least one product selected from the group consisting of menstrual cramp medication and contraceptives as taught by Park. One of ordinary skill in the art would have been motivated to do so in order to relieve symptoms associated with PMS (Park Pages 8-9).

Referring to claim 22: Claim 22 is rejected under the same rationale as set forth above in claim 4.

**Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view US 5,947,302 to Miller.**

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Referring to claim 5: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the information represents a selection by the consumer of products which comprise the determined assortment of feminine care products. However, Miller discloses a method for dispensing absorbent articles wherein an individual selects the determined assortment of feminine care products (col. 2, lines 25-31). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Miller into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to optimize the use of the products (col. 2, lines 34-39).

**Claims 9 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0019778 A1 to Isaacson et al. (hereafter referred to as Isaacson).**

Referring claim 9: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach the step of storing data representing the determined assortment of feminine care products for subsequent retrieval and use with the consumer. However, Isaacson discloses a method for placing on-line orders wherein previous purchase orders stored in a database are displayed to a user for subsequent use by the user (paragraph [0099]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Isaacson into the cited prior art. One of ordinary skill in the

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art would have been motivated to do so in order to allow the user re-create or edit a previous order as taught by Isaacson (paragraph [0099]).

Referring to claim 29: Claim 29 is rejected under the same rationale as set forth above in claim 9.

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0050526 to Swartz et al. (hereafter referred to as Swartz).**

Referring to claim 12: The cited prior art teaches or suggests all of the limitations of claim 11 as noted above. The cited prior art does not teach delivering the ordered products to the consumer along with a reusable storage container for said ordered products. However, Swartz discloses a fulfillment system that uses reusable totes (i.e. bags) for delivery (paragraph [0143]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Swartz into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the consumer to reuse the totes (i.e. bags) in the future.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0050526 to Swartz et al. (hereafter referred to as Swartz) and Official Notice.**

Referring to claim 13: The cited prior art teaches or suggests all of the limitations of claim 12 as noted above. The cited prior art does not teach that subsequent orders are delivered to the consumer without a reusable storage container. However, Official Notice is taken that it is old and well known in the art for a vendor to not deliver a storage container to a consumer on a subsequent order. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to not deliver a storage container to a consumer on a subsequent order in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to conserve storage containers.

**Claims 16 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of Official Notice.**

Referring to claim 16: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach periodically prompting the consumer to place another purchase order. However, Official Notice is taken that it is old and well known in the art to periodically prompt a user to take an action. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to get the user to perform the action.

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Referring to claim 28: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. The cited prior art does not teach standing purchase order for the products. However, Official Notice is taken that standing orders are old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a standing order in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to have the convenience of periodic delivery of a product without the hassle of submitting a new purchase order.

### ***Conclusion***

This is a continued examination of applicant's earlier Application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Naeem Haq**, Primary Examiner  
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November 15, 2006